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WC-09-151✓

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FCC/US BANK ADV

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE  
FORM 159

Approved by OMB  
3060-J589  
Page No. 1 of 2

(1) LOCKBOX # <b>979091</b>		SPECIAL USE ONLY	
		FCC USE ONLY	
<b>SECTION A - PAYER INFORMATION</b>			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>HELEIN &amp; MARASHLIAN</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$1,015.00</b>	
(4) STREET ADDRESS LINE NO 1 <b>1483 CHAIN BRIDGE RD</b>			
(5) STREET ADDRESS LINE NO 2 <b>SUITE 301</b>			
(6) CITY <b>MCLEAN</b>		(7) STATE <b>VA</b>	(8) ZIP CODE <b>22101</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>(703) 714-1300</b>		(10) COUNTRY CODE (if not in U.S.A.)	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>			
(11) PAYER (FRN) <b>0016541484</b>		(12) FCC USE ONLY	
<b>IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>			
(13) APPLICANT NAME <b>BITWISE COMMUNICATIONS, INC.</b>			
(14) STREET ADDRESS LINE NO 1 <b>331 FULTON STREET</b>			
(15) STREET ADDRESS LINE NO 2 <b>SUITE 300</b>			
(16) CITY <b>PEORIA</b>		(17) STATE <b>IL</b>	(18) ZIP CODE <b>61602</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>(309) 689-0711</b>		(20) COUNTRY CODE (if not in U.S.A.)	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>			
(21) APPLICANT (FRN) <b>0008094427</b>		(22) FCC USE ONLY	
<b>COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET</b>			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$1,015.00</b>	(27A) TOTAL FEE <b>\$1,015.00</b>	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
<b>SECTION D - CERTIFICATION</b>			
CERTIFICATION STATEMENT I, <u>Michael P. Donahue</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE		DATE	
<b>SECTION E - CREDIT CARD PAYMENT INFORMATION</b>			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____ ACCOUNT NUMBER _____ EXPIRATION DATE _____ I hereby authorize the FCC to charge my credit card for the service(s) authorization herein described. SIGNATURE _____ DATE _____			



## The CommLaw Group

HELEIN & MARASHLIAN, LLC  
1483 Chain Bridge Road  
Suite 301  
McLean, Virginia 22101

Telephone: (703) 714-1300  
Facsimile: (703) 714-1330  
E-mail: [mail@CommLawGroup.com](mailto:mail@CommLawGroup.com)  
Website: [www.CommLawGroup.com](http://www.CommLawGroup.com)

Writer's Direct Dial Number  
703-714-1313

Writer's E-mail Address  
[jsm@commlawgroup.com](mailto:jsm@commlawgroup.com)

August 7, 2009

Via Overnight Delivery

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau Applications  
P.O. Box 97909  
St. Louis, MO 63197-9000

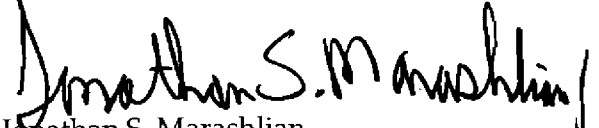
Dear Ms. Dortch:

On behalf of BitWise Communications, Inc. ("Applicant") enclosed please find an original and six (6) copies of an application for consent to transfer control of Applicant, Bitwise Communications, Inc., to Family Communications, LLC. Pursuant to Section 63.04 of the Commission's Rules, Applicant submits this filing as a domestic Section 214 transfer of control application.

Also enclosed is a completed Fee Remittance Form 159 containing a valid credit card number and expiration date for payment, in the amount of \$1,015.00, to the Federal Communications Commission, which satisfies the filing fee required for this Application under the Commission's Rules.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

  
Jonathan S. Marashlian

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of the Application of BitWise	)	WC Docket No. _____
Communications, Inc. d/b/a OmniLEC	)	
For Grant of Authority Pursuant to	)	
Section 214 of the Communications Act of 1934,	)	File No. _____
as amended, and Section 63.04 of the	)	
Commission's Rules for a Transfer of Control	)	
of Blanket Domestic Section 214 Authorization	)	

**APPLICATION FOR CONSENT TO TRANSFER CONTROL**

**I. INTRODUCTION**

**A. SUMMARY OF TRANSACTION**

BitWise Communications, Inc. d/b/a OmniLEC ("BitWise" or "Transferor") through its undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 214, and Section 63.04 of the Federal Communications Commission's ("FCC" or "Commission") Rules, 47 C.F.R. § 63.04, respectfully requests that the Commission approve such authority as may be necessary or required to enable BitWise to transfer control of blanket, domestic Section 214 Authorization and consummate a transaction whereby Family Communications, LLC ("Family Communications" or "Transferee") will acquire control of BitWise through an aggregate stock purchase arrangement.

BitWise is a small competitive local exchange carrier ("CLEC") licensed by the Illinois Commerce Commission. Utilizing its facilities-based fiber-optic network, BitWise currently provides bundled local and long distance voice communications services, Internet based communications services and messaging, and broadband Internet Access services to

approximately 1,500 residential and business customers and 800 wholesale customers throughout Peoria, Illinois and surrounding areas. Consummation of the pending transaction with Family Communications will provide BitWise access to much-needed financial resources, a talented and experienced management team, and additional support personnel. Combining the two companies and adding these resources will help the combined company fulfill the following objectives: (1) expanding BitWise's service area footprint by constructing additional miles of fiber and connecting more homes and businesses to its network, and (2) offering consumers affordable access to technologically advanced, fiber-based communications, Internet Access and video content services.

#### **B. REQUEST FOR STREAMLINED PROCESSING**

The proposed transaction raises no public interest, competition, or foreign ownership issues that would warrant extended review of the Application. Furthermore, all debts to the Commission and/or U.S. Treasury have been resolved and no "Red Light" issues presently exist.<sup>1</sup> Wherefore, BitWise respectfully requests streamlined processing of this Application pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03.

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Transferee will have a market share in the interstate, interexchange market of less than 10 percent, and Transferee will provide competitive local telephone exchange and long distance services exclusively in geographic areas

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<sup>1</sup> Proof of payment of all outstanding debts to the U.S. Government is attached hereto at Exhibit 1. In the event the FCC's Red Light System database is not updated to reflect BitWise's payment of all outstanding debts, the Applicants respectfully invite Competition Policy Division Staff to contact the U.S. Treasury to verify BitWise's "paid in full" status.

served by dominant local exchange carriers that are not parties to the transaction, and neither the Transferee nor the Transferor is dominant with respect to any service. Accordingly, this Application qualifies for streamlined processing pursuant to Section 63.03 of the Commission's rules.

In support of this Application, BitWise provides the following information:

## **II. DESCRIPTION OF THE PARTIES**

### **A. BITWISE COMMUNICATIONS, INC.**

BitWise, a privately held Illinois corporation, provides facilities-based, local and long distance communications services to business and residential consumers in and around Peoria, Illinois. BitWise is headquartered at 331 Fulton Street, Suite 300, Peoria, IL 61602 and maintains all of its books and records, including all of its customer account information, at this office. BitWise offers voice communications, as well as broadband Internet Access and other data services, through a fiber-to-the-home network constructed by BitWise. BitWise bundles long distance services with its local exchange services.

BitWise first registered with the Commission on December 16, 2002, and is assigned FCC Registration Number ("FRN") 0008094427. Upon bundling long distance services with its local exchange service, BitWise registered with the Universal Service Administrative Company ("USAC") as an Interstate Telecommunications Service Provider and was assigned Filer ID

822650. BitWise is a direct contributor to the Universal Service Fund and participates in other FCC programs administered by USAC.<sup>2</sup>

#### **B. FAMILY COMMUNICATIONS, LLC**

Family Communications, LLC ("Family Communications") is a Limited Liability Company formed pursuant to the laws of Illinois. Family Communications is the wholly-owned subsidiary of Midstates Video Corp. ("Midstates Video"). Midstates Video, through its operating subsidiary Family Video Movie Club, Inc. ("Family Video"), is the largest privately owned movie and game renter in the United States, currently employing over 5,800 people across 18 states, with more than 590 stores. Family Communications, Midstates Video, and Family Video share a headquarters located at 2500 Lehigh Ave., Glenview, Illinois 60026.

#### **III. DESCRIPTION OF THE TRANSACTION**

Pursuant to a Stock Purchase Agreement ("Agreement") executed on June 26, 2009, between Transferor, BitWise, and Transferee, Family Communications, Family Communications will acquire direct control of BitWise. Likewise, Midstates Video will acquire indirect ownership and control of BitWise. Specifically, Family Communications will purchase all authorized outstanding shares of capital stock issued by BitWise. Upon consummation of the transaction, Midstates Video, through Family Video, will continue to offer movie and game rental services, and through Family Communications, will add BitWise's fiber-based network and approximately 1,500 business and residential consumers and 800 wholesale customers of voice, data and Internet Access services.

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<sup>2</sup> BitWise is currently appealing decisions by USAC. See *BitWise Communications, Inc., a/k/a OmniLEC, Appeal of USAC Decisions*, WC Docket Nos. 96-45 and 06-122.

Under Family Communications' direction, BitWise will roll out new facilities, as well as offer additional service options to consumers. BitWise will offer advanced fiber-based voice, data and video communications services and will expand consumer choice by offering bundled service packages; all while maintaining competitive pricing for its bundled and a la carte suite of offerings.

#### **IV. PUBLIC INTEREST STATEMENT**

BitWise submits that the transaction described herein will serve the public interest, convenience and necessity. Under new ownership, BitWise will continue to provide high-quality voice communications services to consumers, while gaining access to Family Communications financial and managerial resources, along with the company's operational expertise. Following the transaction, BitWise's existing managerial and technical qualifications to provide local and long distance telecommunications services will be enhanced. Thus, the proposed transfer of control to Family Communications will give BitWise the ability to become a stronger competitor, to the ultimate benefit of existing and potential consumers. The efficiencies and economies of scale resulting from the transaction will improve the combined company's economic viability and, thus, its ability to continue to attract financing to invest in and offer new and innovative services, including those in rural and underserved areas. Through increased efficiencies, BitWise can also decrease its prices without compromising the quality of its services.

The transaction will allow BitWise, under Family Communications' ultimate control, to provide extended and improved fiber-based communications services. The transfer of control

will not result in a change of carrier for customers or any assignment of existing Commission authorizations. Further, the rates, terms and conditions of services currently provided by BitWise to its customers will not change as a result of the transaction.

Following consummation of the proposed transaction, the name of Transferor (or its doing business as or "d/b/a" name) may change to reflect a new brand. Otherwise, the transaction will be seamless and transparent to customers, and BitWise will continue to provide high-quality communications services to its customers without interruption and without change in rates, terms or conditions. Future changes in those rates, terms and conditions, if any will be undertaken pursuant to the applicable federal and state notice and tariff requirements. No competitors will be eliminated as a result of this transaction in any markets. Rather, the transaction will inject further competition into the market to the benefit of all consumers. BitWise anticipates strong growth in its customer base as well as continued service to existing customers.

#### **V. INFORMATION REQUIRED BY COMMISSION RULES, SECTION 63.04**

**(1) The name, address and telephone number of each applicant;**  
Transferor's Name, Address and Telephone Number are as follows:

BitWise Communications, Inc. d/b/a OmniLEC  
331 Fulton Street, Suite 300  
Peoria, IL 61602  
Telephone: 309-639-6664

Transferee's Name, Address and Telephone Number are as follows:

Family Communications, LLC  
2500 Lehigh Ave.  
Glenview, IL 60026  
Telephone: 847-904-9000



- (2) The government, state, or territory under the laws of which each corporate or partnership applicant is organized;

Transferor is a corporation organized pursuant to the laws of the State of Illinois.

Transferee is a Limited Liability Company, organized pursuant to the laws of the State of Illinois.

- (3) The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

Correspondence to Transferor should be directed as follows:

Michael Shuler, C.E.O.  
OmniLEC And BitWise Communications, Inc.  
331 Fulton Suite 300  
Peoria, IL 61602  
OmniNumber: (309) 670-0575  
Fax: (309) 670-0375  
E-Mail: [Mike@OmniLEC.com](mailto:Mike@OmniLEC.com)  
Customer Service: (877) NEW-OMNI

Correspondence to Transferee should be directed as follows:

Craig Hartner, Chief Financial Officer  
Family Communications, LLC  
2500 Lehigh Ave.  
Glenview, IL 60026  
Telephone: 847 904-9015  
Fax: 847 904-9019  
E-mail: [craig.hartner@familyvideo.com](mailto:craig.hartner@familyvideo.com)

Copies of all correspondence to either party should be directed to counsel to both parties:

Jonathan S. Marashlian  
Helein & Marashlian, LLC  
The CommLaw Group  
1483 Chain Bridge Road, Suite 301  
McLean, Virginia 22101  
Office Tel: 703-714-1313  
Office Fax: 703-714-1330  
E-Fax: 703-991-2557  
E-Mail: [jsm@CommLawGroup.com](mailto:jsm@CommLawGroup.com)

- (4) The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent);**

The following individuals/entities directly own or control at least 10% of the equity of Family Communications, LLC:

Name:	Midstates Video Corp.
Percentage Owned:	100%
Address:	2500 Lehigh Ave. Glenview, IL 60026
Citizenship:	US
Primary Business:	Video and Game Rental Retailer / Property Owner/Developer

The following individuals/entities indirectly own or control at least 10% of the equity of Family Communications, LLC through ownership Midstates Video Corp.:

Name:	Charles Eric Hoogland
Percentage Owned:	16.99%
Address:	1022 East Adams Street, Springfield, IL 62704
Citizenship:	US
Primary Business:	Vice President Midstates Video Corp.

Name:	Keith A. Hoogland
Percentage Owned:	17.96%
Address:	2500 Lehigh Avenue, Glenview, IL 60026
Citizenship:	US
Primary Business:	President Midstates Video Corp.

- (5) Certification pursuant to §§ 1.2001 through 1.2003 of the Commission's Rules, 47 C.F.R. §§1.2001-1.2003;

Transferor hereby certifies pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853.

- (6) A description of the transaction;

For a full description of the transaction, see Section III of the application.

- (7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area;

Transferor currently provides local and long distance communications, data and Internet Access services through its fiber-based network in and around Peoria, Illinois. Transferee presently offers no telecommunications services, either directly or indirectly. Under the Agreement, as described in Section III above, Transferee will take control of Transferor's assets and manage its existing network and continue providing the same communications services to existing customers. Further, Transferee will continue to expand the network and service offerings to surrounding areas, with the potential to expand into additional states.

- (8) A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment;

For an analysis of the Application's qualification for streamlined processing, see Section I(B) of the Application.

**(9) Identification of all other Commission applications related to the same transaction;**

No other applications relating to the current Application have been filed with the Commission.

**(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure;**

The parties do not request special consideration at this time.

**(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction;**

No separately filed waiver requests have been sought in conjunction with the transaction.

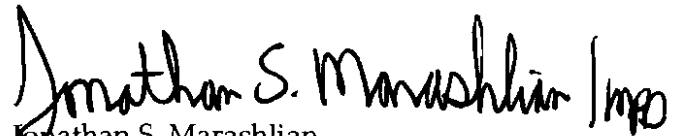
**(12) A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.**

For a description of impact of the transaction on the public interest, convenience and necessity, see Section IV of the Application.

## VI. CONCLUSION

For the foregoing reasons, the parties respectfully submit that the public interest, convenience and necessity are furthered by a grant of this Application for consent to transfer control of BitWise Communications, Inc. to Family Communications, LLC.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan S. Marashlian" followed by a stylized "JMS" monogram.

Jonathan S. Marashlian  
Helein & Marashlian, LLC  
1483 Chain Bridge Road  
Suite 301  
McLean, VA 22101  
(703) 714-1313  
[jsm@commlawgroup.com](mailto:jsm@commlawgroup.com)

**Exhibit 1**

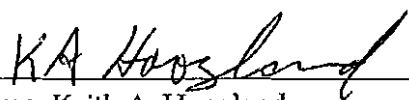
**Proof of Payment to Department of Treasury**

## Verifications

### Verification

I, Keith A. Hoogland, state that I am President of Midstates Video Corp.; that I am authorized to make this Verification on behalf of Midstates Video Corp., and Family Communications, LLC; that I have reviewed the foregoing filing; and that the contents with respect to Midstates Video Corp., and Family Communications, LLC are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of August, 2009.

  
Name: Keith A. Hoogland  
Title: President  
Midstates Video Corp.



### Verification

I, Michael Shuler, state that I am Chief Executive Officer of BitWise Communications, Inc. d/b/a OmniLEC ("BitWise"); that I am authorized to make this Verification on behalf of BitWise; that I have reviewed the foregoing filing; and that the contents with respect to BitWise are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7 day of August, 2009.



Name: Michael Shuler

Title: Chief Executive Officer  
BitWise Communications, Inc. d/b/a  
OmniLEC